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In re Application of:
ADDISON, DEBORAH et al
Serial No. 10/532,520
Filed: Jan. 30, 2006
Docket: JJM0627USPCT
Title: FLUID WOUND DRESSING
COMPRISING PARTIALLY CURED
POLYURETHANE

1/12/09
DECISION ON PETITION
UNDER 37 CFR § 1.181

This is a decision on the petition filed Dec. 19, 2008 under 37 CFR 1.181 requesting withdrawal of the non-compliant notice mailed Sep. 19, 2008 and refund of extension of time fee.

The petition is **Granted in part.**

In finding petitioner's points of argument persuasive, the requested relief is granted. The non-compliant notice of Sep. 19, 2008 is hereby withdrawn. The requested relief is granted. The examiner has been directed to consider the amendment filed Oct. 22, 2007 and issue an Office action as soon as possible.

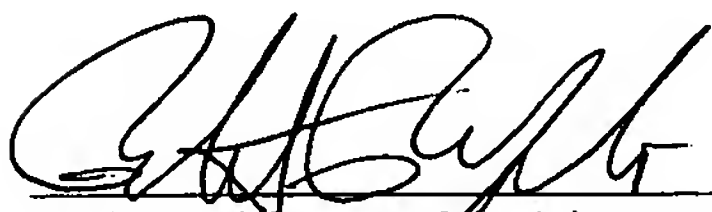
With regard to the requested refund of extension of time fee, 35 USC § 42(d) permits a refund of "any fee paid by mistake or any amount paid in excess of that required." Thus, the Office may refund: (1) a fee paid when no fee is required (a fee paid by mistake); or (2) any fee paid in excess of the amount of fee that is required. See Ex Parte Grady, 59 USPQ 276, 277 (Comm'r Pats. 1943) (the statutory authorization for the refund of fees is applicable only to a mistake relating to fee payment). However, petitioner has not shown, nor does inspection of the record reveal, that the fee in question was paid either in excess or by mistake. Since the fee was paid in the proper amount, the fee was not paid in excess.

The issue here is whether the fee was paid by mistake. The extension of time fee was owed at the time it was paid, and it was paid by a duly authorized representative of the applicant. The extension of time fee paid on Dec. 19, 2008 was necessary to prevent the application from going abandoned and to respond to the non-compliant notice mailed on Sep. 19, 2008. Such is not a mistake within the meaning of the statutes and regulations. Under the circumstances, the requested refund can not be approved.

For the foregoing reasons, the relief to withdraw the non-compliant notice is granted. The requested refund will not be granted. Specifically, the extension of time fee was not paid by mistake. The application is being forwarded to Examiner Kim Lewis of Art Unit 3772 for further consideration of the amendment filed Oct. 22, 2007.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION GRANTED IN PART.



Robert Olszewski, Director
Technology Center 3700